



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

Lieutenant Maria Villar : ORDER

Tax Registry No. 915005 : OF

Building Maintenance Section : DISMISSAL

X

Lieutenant Maria Villar, Tax Registry No. 915005, Social Security No. ending in [REDACTED]

having been served with written notice, has been tried on written Charges and Specifications numbered 80129/04, as set forth on form P.D. 468-121, dated July 15, 2004, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Lieutenant Maria Villar from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: 0001 Hours, April 07, 2009

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

February 6, 2009

In the Matter of the Charges and Specifications : Case No. 80129/04

- against -

Lieutenant Maria Villar

Tax Registry No. 915005

Building Maintenance Section

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner – Trials

APPEARANCE:

For the Department: **Michelle Alleyne, Esq.**
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Marvyn Kornberg, Esq.
125-01 Queens Boulevard
Kew Gardens, New York 11415

T₀:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on July 14, 2008 and on July 16, 2008, charged with the following:

1. Said Lieutenant Maria Villar, assigned to School Safety Division, on or about July 6, 2004, did wrongfully and without authorization divulge or discuss official Department business with a person, identity known to this Department.

PG 203-10 Page 1, Paragraph 3 – PROHIBITED CONDUCT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Marvyn Kornberg, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Joseph Fusco, Police Officer Kelvin McCoy (and Lieutenant Joseph Ferrara. Further entered into evidence were two transcripts of calls made and received by Alberto Villar ("Alberto")¹ (Department's Exhibit [DX] 1 and DX 2, respectively), a Cingular Wireless statement in the name of the Respondent (DX 3), and the tape recording and transcript of the official Department interview of the Respondent (DX 4 and DX 4a, respectively).

¹ Because several relevant individuals in this case share the same surnames, first names will be used where appropriate.

Detective Joseph Fusco

Fusco has been a member of this Department for the past 19 years and is presently assigned to Queens Narcotics. He has been assigned to the Major Case Unit of that command for the past six years and possesses ten years of experience in narcotics enforcement. In his current assignment, he investigates the "upper levels of the narcotics trade." Fusco stated that this is accomplished primarily through the use of wiretaps, surveillance and information that he and his team gather from informants or the public.

Fusco discussed the process of obtaining wiretaps. He stated that in order to obtain a wiretap, you must exhaust all other means and be able to demonstrate probable cause of narcotics activity on a particular phone line.

On direct-examination, Fusco testified that he commenced an investigation into the distribution of cocaine and heroin sometime in 2003. He became familiar with an individual named [REDACTED] ("[REDACTED]") during a telephone wiretap of an individual named [REDACTED]. This wiretap revealed that [REDACTED] was an American Airlines employee and that he was engaged in the narcotics trade. His function as the Ground Crew Chief for the baggage handlers allowed him to retrieve narcotics which were secreted in aircraft originating from the Dominican Republic to John F. Kennedy International Airport in Queens. The wiretap of [REDACTED] revealed several phone calls between him and [REDACTED]. This led to belief that [REDACTED] was a co-conspirator and ultimately, to the surveillance and wiretapping of [REDACTED].

On July 5, 2004, Fusco and his team were conducting surveillance of [REDACTED] and another individual, [REDACTED] "were doing a transaction for a couple of ounces of cocaine" on that day. Fusco learned of this transaction by the wiretap on [REDACTED]'s telephone and the details of the telephone conversation between [REDACTED] and [REDACTED] regarding the transaction were being

relayed from the plant (where the wiretaps are listened to and relayed to officers in the field) to Fusco in the field, where he was observing [REDACTED]. Fusco testified that he followed [REDACTED] to Rockaway Avenue in Queens, and observed an "exchange of currency for narcotics" between [REDACTED] and [REDACTED]. An arrest of the two was subsequently made, and a search incident to arrest of [REDACTED] revealed two clear plastic bags of cocaine. Also recovered from [REDACTED]'s person was a Lieutenants Benevolent Association (LBA) card, which he stated he received from his sister, the Respondent.

While the arrest of [REDACTED] terminated the wiretap of his telephone and in essence ended the investigation of him, Fusco indicated that he and his team were still investigating [REDACTED]. To that end, [REDACTED]'s cellular phone was being wiretapped. On July 6, 2004, Fusco testified that he and his team were on duty in Queens near JFK Airport. On that date, his team included a lieutenant, a sergeant and seven other investigators. He explained that the reason for the team being in this area was because [REDACTED] was heard on the wiretap discussing narcotics being placed on an airplane. Fusco stated there was an additional conversation heard in which [REDACTED] received a telephone call from the Respondent, his sister, informing him of [REDACTED]'s arrest and the fact that a wiretap was involved. At this point, Fusco stated that a meeting was held with his supervisors where it was determined that [REDACTED] should be arrested. On July 7, 2004, [REDACTED] was arrested and found to be in possession of a black duffel bag with "white lettering, NYPD on it." Inside of the bag were 2 kilograms of heroin. Fusco also stated that [REDACTED] said that he got the bag from his attic. [REDACTED] was also found to have an LBA card, which he said he got from the Respondent.

A subsequent notification was made to the Internal Affairs Bureau regarding the conversation heard on the wiretap between the Respondent and [REDACTED]. According to Fusco, the

issue was that information regarding the wiretap had been furnished to [REDACTED] causing Fusco's team "to dismantle the case prematurely due to the fact that information was being told to our subject about a wiretap. . . . It could have shut the case whole down. . . . [b]ecause he was being told the information that there is an investigation."

Fusco agreed on cross-examination that he arrested [REDACTED] on the evening of July 7, 2004, for a Class A-1 felony, and that because of this arrest, the wiretaps on [REDACTED]'s telephones had to be shut down within 24 hours. Fusco also acknowledged that [REDACTED] was arrested at the same time as [REDACTED], and that he was the arresting officer. Fusco acknowledged that pursuant to this arrest he prepared a property clerk's voucher, dated July 5, 2004. Fusco further agreed that at the time of arrest, [REDACTED] had two bags of cocaine in his right pants pocket.

Fusco stated that he was unsure [REDACTED]'s arrest was based on a crime occurring on July 1, 2004. However, when shown a copy of the criminal complaint, the witness conceded that this was accurate. He further agreed that the property clerk's voucher associated with the arrest of [REDACTED] was completed on July 5, 2004. Upon questioning, and after reviewing his notes, Fusco stated that [REDACTED] was in the vehicle with [REDACTED] on July 5, 2004, at the time of his arrest. When asked who [REDACTED] was, Fusco indicated that he is a letter carrier whom he arrested on July 1, 2004. He explained that [REDACTED] was observed on that date "[handing] him off a bag of cocaine or whatever."

Fusco was cross-examined with respect to [REDACTED]'s charges. He did not recall if [REDACTED] was charged with "handing off a deck of cocaine on July 1." When given the opportunity to refresh his memory via relevant documents, Fusco acknowledged that there was a charge of criminal sale of a controlled substance for an alleged sale to [REDACTED] on July 1, 2004. Fusco stated that he charged [REDACTED] with Criminal Possession of a Controlled Substance in the Seventh

Degree, as reflected on the online booking worksheet ("OLBS"). Fusco did agree, however, that the associated criminal court affidavit only reflects one charge of Criminal Sale of a Controlled Substance in the Third Degree.

Fusco then acknowledged that his arrest of [REDACTED] on July 5, 2004, was based upon the sale to [REDACTED] that occurred on July 1, 2004. Fusco stated that at the time of the arrest, he did find drugs on [REDACTED]'s person. However, he conceded that while he charged [REDACTED] for the July 5, 2004, possession on the OLBS, the Queens County District Attorney's Office did not elect to keep this charge on the criminal court complaint.

With respect to the wiretap, Fusco agreed that by law, the wiretap of [REDACTED] was to be "closed down" within 24 hours of his arrest. The time of arrest was 5:40 p.m. on July 5, 2004. Fusco did not have records or a recollection of when the wiretap of [REDACTED] was shut down, but opined that it was "possibly the next day." Fusco conceded that he did not know when the [REDACTED] wiretap was in fact closed. Fusco did agree that he was in court on July 6, 2004, signing an affidavit relating to [REDACTED]'s arrest. Upon questioning by the Court, Fusco stated that the wiretap was authorized by a Queens County Supreme Court judge. Fusco asserted that he did not tell anyone about the wiretap. He stated that he did not know how the information about the wiretap got into a computer, and denied that it was he who submitted this information into a computer. Fusco stated that he has no access to the computer at Central Booking. He indicated that the DA's Office, his sergeant, his field team members and members of the plant all had knowledge about this wiretap.

Fusco agreed that taps existed on both [REDACTED]'s and [REDACTED]'s telephones. He agreed that when a telephone is wiretapped, "line sheets" are constructed. He also stated that there were "pen registers" (the device that captures and records numbers dialed from a particular telephone

line) on both telephones. The witness agreed that the pen register functions when a telephone is taken off the hook or replaced, that it monitors the time of the call, and that it monitors minimization. With respect to the line sheets, Fusco agreed that the person who is at the plant makes entries on the line sheets and is supposed to indicate whether or not the conversation was minimized.

Fusco did not recall what [REDACTED]’s telephone number was. When permitted to view the associated line sheet to refresh his memory, he agreed that [REDACTED] was the telephone number belonging to [REDACTED] that was being monitored pursuant to the wiretap. Fusco agreed that he had indicated that the Respondent made telephone calls from her cellular phone to [REDACTED]’s phone, and that this should be reflected on the line sheets and should have been picked up by the pen register. (The Respondent subsequently testified that her cell phone number was [REDACTED].)

When asked if he knows the telephone number of Queens Central Booking, Fusco replied in the negative. When counsel for Respondent asked if [REDACTED] seemed to be the correct number, Fusco agreed that it did. Fusco was asked to view DX 3, the Cingular Wireless statement for the Respondent’s cellular telephone. When directed to telephone call 127 on the statement, he indicated that the number dialed was [REDACTED] and was dialed at 12:09 p.m. on July 6, 2004. Fusco agreed that this is the tapped line belonging to [REDACTED]. After examining this document a second time, Fusco stated that this call was at 12:08 p.m. Fusco was then asked to view Respondent’s Exhibit (RX) C, a line sheet from plant 105. According to the plant report sheet, it is dated July 6, 2004, and this particular plant opened at 12:00 p.m. and the witness acknowledged that the document encompasses 12:08 p.m. on that date. When viewing the document, Fusco acknowledged that there was no entry for a 12:08 p.m. telephone call on that

day. Fusco was then asked to examine RX D, a copy of the pen register relating to [REDACTED]’s wiretapped line. The witness agreed there are no 12:08 p.m. telephone calls reflected on the pen register printouts.²

Respondent’s counsel indicated that there was a phone call between the Respondent and Alberto on July 6, 2004, at 8:23 p.m., the substance of which was the arrest of [REDACTED] and the involvement of a search warrant. Fusco was asked if he ever mentioned the involvement of a search warrant, and stated that he did not. He further stated that he never mentioned a search warrant to anyone at the District Attorney’s office. Fusco stated that it was either he or his sergeant who informed Sergeant Ferrara from IAB of the July 6 telephone call between the Respondent and [REDACTED] but that he has no recollection of speaking to [REDACTED] about this. Fusco was asked again if he “spoke to [REDACTED] on July 8, 2004 and told [him] that on 2023 hours, the subject officer called [REDACTED]’s cell phone from her cell phone and states she is waiting to get more information, she states [REDACTED] has not seen the judge yet.” He replied that he did not recall if he had this conversation with Fusco. When asked to examine the Respondent’s Cingular bill again, previously marked as DX 3, Fusco identified that there was a call to [REDACTED]’s cell phone on July 6, 2004, at 8:56 pm. He agreed that there was no call at 8:23 p.m. When examining the pen register, previously marked as RX D, Fusco agreed that there is an 18-second telephone call at exactly 8:23 p.m. Fusco also conceded that this 8:23 p.m. telephone call is not reflected on the Cingular statement.

² A conversation was subsequently had between all parties present whereupon the mechanics of the pen register were discussed. It was identified that when the telephone is off hook, it triggers the pen register. The “on hook time” on the printout reflects the time that the call terminated, and the printout also reflects the duration of the call made or received. During this discussion, Fusco offered that the pen register printout is not necessarily reflective of the “same exact phone call as the defendant’s personal phone records.” While Respondent’s counsel objected to this statement, the Court pointed out that the times on people’s watches can vary.

Regarding the [REDACTED] arrest, Fusco did not recall who in the District Attorney's office he spoke with. He was also unable to recall if any other members of the Department who participated in [REDACTED]'s arrest or investigation were present at Central Booking or the DA's office subsequent to his arrest. Fusco also did not recall if he informed the Assistant District Attorney that a wiretap was involved in this case. He was also unable to explain how information regarding a wiretap existed in either the Central Booking or pre-arrangement computers. Fusco did not recall when he shut down the [REDACTED] wiretap, but agreed that it is supposed to be done on the return date to the court, generally within 24 hours of the arrest. He did not recall closing the wiretap at the time that he appeared at the DA's office to sign the criminal complaint the day following the arrest. Fusco stated that he did shut down the wiretap and that there was a point where he did go into court, into a judge's chambers, and state that the objective had been reached after the arrest occurred, but that he does not recall the specific date that this occurred. When asked if he was even sure if he had closed the wiretap, Fusco indicated that he believed he would have to, however, he later conceded that he did not have a memory of it occurring. Fusco stated that the sealing of the tapes is done by a judge and that the tapes are then stored in Manhattan. Fusco agreed that there is a record or an order made when a wiretap is closed out, but that he did not know where the [REDACTED] order was. He later stated that he appeared before a judge in Queens County Supreme Court for the purpose of closing out the wiretap, but did not recall the judge's name.

Fusco agreed that there was nothing wrong with police officers giving family members union courtesy cards. When asked how many tapes comprised the [REDACTED] and [REDACTED] wiretaps, Fusco indicated that he had no idea but that it was more than 100. Fusco said that all of the tapes were turned over to the DA's office with respect to the [REDACTED]

case. He agreed that "50 some odd tapes" were turned over to the DA in the [REDACTED] case, and that there were possibly 50 tapes for the [REDACTED] case. Fusco agreed that the [REDACTED] wire was number 105 of 2004, but he did not recall the [REDACTED] wire being 208 of 2004. He did not know if there were 109 [REDACTED] tapes and 14 [REDACTED] [REDACTED] tapes given to the DA, and then stated that he did not know if he turned over 50 or 58 tapes. Upon further inquiry regarding the tapes, Fusco did not know if it was 58 tapes, or less than 109 tapes turned over. Whereupon Fusco was shown a certified copy of the record of the proceedings in the [REDACTED] criminal case to refresh his recollection, he indicated the proceedings showed 58 tapes put into evidence, and that he was unsure with respect to the total number of tapes.

Fusco indicated that he was unaware that Detective Maldonado from IAB reviewed 123 tapes in total – 109 from wire 105/04, and 14 from 208/04. The witness stated that, "I turned over what I was supposed to turn over," and by that Fusco meant all of the tapes. He further stated that all of the tapes were sealed under a Supreme Court order and that an unsealing order is needed for access to these tapes. Fusco was asked if the DA's office had access to 119 tapes and turned over 53. He indicated that he did not know.

Upon re-direct examination, the witness testified that the line sheets indicated telephone numbers going into [REDACTED]'s telephone. Fusco also testified that he observed the Respondent's cellular phone number "captured" by the wiretap at 8:56 p.m., and he further explained that the wiretap of this telephone did capture a conversation between the Respondent and [REDACTED]. Fusco said that while he did not hear the tape of the conversation, he did review the line sheet associated with that conversation. He explained that he discussed this conversation with Detectives Espinal and Minert, both of whom worked in the plant, and that the conversation was

in Spanish and was subsequently transcribed into English. Fusco said that he had an opportunity to review the transcriptions of the relevant conversations.

Fusco was asked to view DX 1 and DX 2, and identified them as transcriptions of telephone calls on July 6, 2004. He testified that they were of telephone calls between the Respondent and [REDACTED] He explained that the first call was at 3:43 p.m., and the second was at 8:23 p.m. The first call was from [REDACTED], and the second call was from [REDACTED]

[REDACTED] Fusco was informed by the plant personnel that although the second call was not from the Respondent's cell phone number, it was a conversation between the Respondent and [REDACTED] He indicated that the plant personnel that he spoke with were comprised of Espinal, Minert and Alvarez, and that he did not listen to the tapes because they are in Spanish. Fusco explained that Espinal and Alvarez speak Spanish and that he has been working with them since the inception of this particular wiretap, and that they have performed Spanish to English transcriptions on this case before. In examining DX 1 and DX 2, the witness opined that the conversations appear to be continuations of each other.

Fusco again stated that [REDACTED] was arrested on July 5, 2004. He stated that he also arrested [REDACTED] on July 1, 2004, when he observed [REDACTED] purchasing narcotics from [REDACTED] Thereafter, he continued his investigation of [REDACTED] which ultimately led to his arrest on July 5, 2004.

During re-cross examination Fusco did not dispute that DX 1 was a short telephone conversation of "5 lines, basically," in which [REDACTED] and the Respondent discussed, inter alia, the fact that [REDACTED] had not yet been arraigned, that he was under investigation, and had been recorded. Fusco agreed that this conversation took place at 3:43 p.m. With respect to the conversation transcribed on DX 2, Fusco indicated that it was an incoming call from [REDACTED]

[REDACTED] and that he did not know who that number belongs to. Upon being told that the phone number belonged to [REDACTED]'s wife, Fusco's recollection was not refreshed. Fusco was unable to say of his own knowledge that the calling parties in DX 1 and DX 2 are one and the same. All he could testify to is what he was informed by investigators and transcribers. Fusco conceded that his testimony that the calls memorialized in DX 1 and DX 2 were made by the Respondent is based upon information that he received from third parties.

Transcribed Phone Call: DX 1

The call memorialized in DX 1 took place at 3:43 p.m. on July 6, 2004:

[REDACTED]: Hello.
Respondent: Oh no [REDACTED] your [sic] working I'll call you later then, your [sic] working.
[REDACTED] Tell me then, tell me
Respondent: Oh I don't yet the kid hasn't seen the judge yet. And I was talking to McCoy because he works in the court, and according to what the complaint says they had him under investigation and I don't know what what. They have him recorded and this and that so I don't know. We[']re talking about a big case.
[REDACTED]: Oh devil, OK so call me later.
Respondent: OK bye
[REDACTED]: OK

Transcribed Phone Call: DX 2

The call memorialized in DX 2 took place at 8:23 p.m. on July 6, 2004:

Respondent: Tell me [REDACTED]
[REDACTED] What happened? You tell me.
Respondent: No nothing yet they just sent the folder to court he will see the judge tonight. I am trying to find out to see I'm waiting for a call to see if they tell me how much the bail is[]going to be but they might not even give him bail.
[REDACTED]: Devil!
Respondent: So I don't know

[REDACTED] Like what time will they see him tonight.

Respondent: No he has to see him. The judge will see him tonight without any problem but the problem is what is going to happen with this because

[REDACTED] No, not only that we have to wait until we see him so then we will know one [sic] going to do.

Respondent: Uh huh what was I going to tell you? Then I found out it was a search warrant that they did that it is when they get an order from the court and they get in to the house they recorded communications they intercept his telephone.

[REDACTED] So they w[e]re behind that kid then.

Respondent: Yes because it was an investigation that was going on for a long time I have telling him " [REDACTED] be careful that they grabbed [REDACTED] two or three times I told him [REDACTED] be careful that maybe they are you know they are intercepting those services from that shit [REDACTED] dosen't [sic] listen to any body that is what I found out that is what an investigation that this and that they have him charged with twenty first degree that dosen't [sic] get bail.

[REDACTED] Oh well

Respondent: But what is he saying what he had in possession a cut.

[REDACTED] Yes I know dosen't [sic] respect it to me my God I know all ready.

Respondent: Uh huh so then if that goes to the lab[r]atory you see and it comes but that it wasn't drugs then there is no case but it all depends on the investigation that they have I don't know

[REDACTED] It's all right so call later when you know[]something.

Police Officer Kelvin McCoy

McCoy has been a member of this Department for 14-and-a-half years and was assigned to the Queens Court Section. He has been assigned in this command for 12-and-a-half years.

McCoy said that his duties included arrest processing, where he explained that "it's basically you deal with the intake of the prisoners into Central Booking and you deal with them all the way up until arraignment."

McCoy identified that in the course of working at the Queens Court Section, personnel have the occasion to deal with the defendants, and inquiries from parties outside. Specifically, he mentioned relatives of the defendants and other members of the service. He explained that

when telephone calls come in from non-uniformed personnel regarding an arrest, they supply information relating to "the basics on the arrest. The arrest number, whether a case is court ready, and if the person is already seen by a judge, we refer them to the Court Clerk." McCoy stated that this information is maintained in a Department computer, the Online Prisoner Arraignment system ("OLPA"). He explained that the interested party would be furnished with basic information and "nothing too specific regarding the case." In response to the Court's inquiry, McCoy indicated that members of the public are not informed with respect to the charges listed on a defendant's arrest report. When asked to describe the format of the OLPA system, McCoy stated that it is a DOS-based system with different menus, one of which has the defendant's name, arrest number, the charge, and where they are lodged (a precinct versus Central Booking), and at the bottom of this screen there is a small notes section. McCoy said that the information contained in the notes section is for the Department's use.

McCoy explained that he became familiar with the Respondent in 1997. He said that they worked together in the Queens Court Section when the Respondent was a police officer and that they worked together from 1997 to around 2000. He explained that they were co-workers and that he considered the Respondent a friend.

The witness indicated that he works "steady tours" at the Queens Court Section, specifically the 4x12 tour, and that he worked this tour in 2004. On July 6, 2004, he also performed this tour. He stated that on this day, he received a telephone call from the Respondent at about 4:00 p.m. McCoy testified that this call came into the Expedited Affidavit Processing (EAP) office where he was working and that the Respondent recognized him on the phone because she called him by his first name. He stated that he knew that he was talking to the Respondent. McCoy explained that the Respondent said, "listen, someone got arrested. And she

asked me basically can I go in the computer and get some information for her." He was reluctant to do so and told the Respondent that she had the code to access this program and that she could do so from where she was working. The Respondent informed him that the computers were not working where she was located. McCoy explained, "at that point, I grudgingly got up and went in the other room, complaining. And I looked into the computer system and I gave her the arrest number and maybe a few other particulars regarding the case."

McCoy stated that the Respondent furnished the last name [REDACTED] when asking for information during the telephone call, and in querying that name in the OLPA system he received the arrest number in addition to some notes underneath the notes caption. He indicated that the notes reflected "some information about a wiretap." The Respondent "asked me for the arrest number, I gave her that. She wanted to know what the charge was. I gave her that. And at this point I was skimming through the notes, I didn't read it word-for-word. I said it says something here about a wiretap." McCoy stated that he informed the Respondent about the wiretap notation and that was the end of that telephone call.

McCoy explained he that spoke with the Respondent "a couple of times that day." She telephoned him again asking for further information about the arrest. Particularly, "she told me that she wanted to know what to tell the guys – I don't know if it was a relative, wife, whatever, friend, but she wanted to know information about what to tell the people so they would know how to go about handling their end of the situation." The Respondent inquired if the case was "court ready," who was working on it, and other pertinent details. McCoy stated that the OLPA screen does indicate if a case is court ready, but at the time the Respondent asked if it was so ready, it was not. Later on in the evening, the Respondent inquired about bail for the case. She asked McCoy if he knew what the bail would be set at, and he explained that he did not know but

guessed around \$10,000 because of the charges. McCoy stated that he subsequently heard from the Respondent that the bail was in fact set at \$10,000, and that she asked what the procedure was for posting the bail. At this point, he stated that he passed the telephone off to another officer because he was not familiar with that procedure.

McCoy stated that, prior to the conversation with the Respondent, he did not know who [REDACTED] was. He indicated that he subsequently learned at his official Department interview that [REDACTED] was the Respondent's half-brother. He stated that the Respondent never informed him that [REDACTED] was her half-brother during the conversations that he had with her.

McCoy again explained that when a member of the public telephones Central Booking for the purpose of inquiring about an arrest, they would be provided with the arrest number, the date of the arrest and "that's roughly it." He explained that the charges are not provided because of the fact that "you never know who you are talking to. It could be the defendant calling themselves from the cell area." McCoy stated that he provided information to the Respondent with respect to the charges and the wiretap because she was a member of the service. He stated that he did not hear from the Respondent anymore on July 6, 2004.

The witness testified that he was working the next day, when another officer advised him that the Respondent was in the courtroom looking for him, that her brother had been arrested and that she was upset. McCoy stated that he went over to the courtroom where he found the Respondent in the interview booth talking to her brother whose name he later learned to be [REDACTED]

[REDACTED] He testified that he had known [REDACTED] as " [REDACTED]" McCoy stated that he had a conversation with the Respondent and that she was upset. While the Respondent did not tell McCoy anything about the case at this time, he stated that it was common knowledge that it concerned drug dealing because [REDACTED] had just been arraigned. At this point, the Respondent

was present in the court with his then-girlfriend, child and her sister, and she remarked that she was going to find an attorney. She subsequently left and McCoy headed back towards the DA's office. He had no further interaction with the Respondent on July 7, 2004.

McCoy stated that he next heard from the Respondent on July 8, 2004, when he returned a telephone message from her and she informed him that she had been suspended "for the good of the Department." Upon learning of the Respondent's suspension, he indicated that he "started getting a feeling in my gut something wasn't right." At this point, McCoy stated that he had already received a notification from IAB stating that they wanted to speak with him to conduct an official Department interview. When he informed the Respondent of this, she explained the conundrum to him. He stated that he "separated myself from the situation, so I didn't speak to her again."

An official Department interview was ultimately conducted of McCoy. He was questioned with respect to his July 6, 2004, communications with the Respondent. He stated that after his interview, the Respondent telephoned him on his cellular phone. When he did not answer the call, the office telephone rang. Upon answering, it was the Respondent. McCoy informed her that he could not speak or meet with her.

Upon cross-examination, McCoy indicated that he has never been charged with any Departmental violations, nor was he charged in connection with furnishing confidential information to the Respondent. He further agreed that he was never charged with any improprieties with respect to the matter in the instant case. McCoy indicated that at the first telephone call with the Respondent, she did not inform him of her relationship to [REDACTED] When questioned with respect to his response to the same question during his official Department interview, McCoy acknowledged that he did state during that interview that the inquiry was for

either a friend or a relative. He stated that as of the date of this proceeding, he does not recall his response to that question and that his memory of the incident was probably better four years prior, in 2004.

McCoy could not recall if he and Respondent's counsel had spoken before regarding the arrests of his clients. Upon receiving a call from the public regarding an arrest, McCoy agreed that people want to know the arrest number so that they can reference the arrest easily when calling in the future. McCoy indicated that he does not provide information on charges to the general public, but that other officers in his command may provide this information to lawyers. He agreed that during his conversation with the Respondent she stated that she was seeking the information regarding [REDACTED] in order to give it to "a woman, and she wanted to give them information, which way to go." He acknowledged that in his official Department interview, he informed investigators that the Respondent stated that [REDACTED]'s wife was calling her, and was upset and wanted information pertaining to the arrest. He acknowledged that he later learned at the interview that the wife was the Respondent's sister-in-law. McCoy agreed that he supplied the Respondent with information about [REDACTED]'s case, namely: the arrest number, the applicable charges and the fact that the notes section reflected that there was a wiretap involved.

With respect to the wiretap information of [REDACTED], McCoy did not tell the Respondent that it was "secret information," nor was he aware that it was "secret information." He indicated that while he has never been instructed not to furnish the public with information in the OLPA notes section, McCoy stated that "we don't give that information to the public," and thereafter stated that he has been told not to give this information to the public. He agreed that he assumed that he was providing the information to a police officer, but conceded that the Respondent never stated that her inquiry was police business. McCoy agreed that he informed

investigators at his interview that the Respondent said that her inquiry was for a friend or a relative.

McCoy explained that he received the initial telephone call from the Respondent at the EAP phone number, [REDACTED], and that this number is not available to the general public. He agreed that about an hour and a half to two hours after the initial call, he received a second call from the Respondent asking if the case was court ready and who the assigned ADA was. At the time of this call, he did not have this information on the OLPA screen. McCoy explained that after 9:00 p.m., there was a third call from the Respondent, whereupon she informed him that [REDACTED] had been arraigned and that the bail amount was \$10,000 as he had previously predicted. He agreed that he made this "wild guess" with respect to the bail amount in a conversation prior to the third call with the Respondent. It was also during this third phone call that the Respondent asked about how to post bond and McCoy proceeded to refer her to another officer in the office to explain the procedure. McCoy did not hear this conversation.

Relative to the first telephone call with the Respondent, McCoy agreed that he might have mentioned a search warrant. He informed the Respondent that when there is a wiretap, there is usually a search warrant, stating "they tend to go hand in hand." When asked, McCoy indicated that he was unaware that there was no search warrant in this case, and that he volunteered to the Respondent the fact that one may have existed.

McCoy agreed that IAB members told him that his conduct was "incorrect." He acknowledged that he was informed that what he did "could have been impeding an investigation" and "could have been violating the secrecy of a wiretap." However, McCoy asserted that his conduct was innocent and it was not until a later time where the impropriety was brought to his attention. He said that he was not trying to impede an investigation. McCoy

acknowledged again that the Respondent never said she was making the inquiry of [REDACTED] pursuant to Department business and that he innocently furnished her with the information that she requested. He indicated that at the time he gave the Respondent the information, he did not know what she did with that information, nor was he aware that there was an ongoing investigation pursuant to the [REDACTED] wiretap, nor was he aware if the Respondent knew about the ongoing investigation.

McCoy acknowledged that he has been in Central Booking in Queens for a long time, and that he has been inside and outside the courtroom. He agreed that when an individual is in the basement of Central Booking, there is an office to the right of the doors for the public side of the courtroom. He acknowledged that this is an information office with a screen in the front with a person behind this screen. McCoy indicated that the person behind this window is an employee of the court system. This employee has access to a computer located behind this screen and McCoy agreed that this computer had access to OLPA. McCoy acknowledged that on the day that he spoke with the Respondent, if the court employee at the information window accessed the OLPA screen with respect to the [REDACTED] case, the same information would have been displayed. McCoy agreed that he does not know what information was given out by court employees with respect to [REDACTED]'s case, nor is he aware who, if anyone, received that information. McCoy was "not 100% certain" if the court employees had access to the "same privileged information" that he did on that date.

Upon re-direct examination, McCoy testified that he would not have given to the public the information that he furnished the Respondent – wiretap information and the charge details – because "you don't know where the information is going." He indicated that it was not until his official Department interview that he learned that [REDACTED] was the Respondent's half brother, and

that he obtained this information from the sergeant and the lieutenant conducting the interview. McCoy further indicated, again, that on the date that he spoke with the Respondent, she provided him with the last name ‘[REDACTED]’ for the basis of the OLPA search. She indicated that the inquiry was for either a friend or a relative. The Respondent “wanted – the woman was calling her and she wanted to, I guess, tell her what to do, how to go about – if it came to get bail money, how to go about proceeding with the case.” To the best of McCoy’s knowledge, the Respondent did not tell him that she was going to convey the information to someone else.

With respect to the OLPA system, McCoy said that the screen at the information window differs from the screen that he had accessed but was unable to elaborate to what extent they differed. He also indicated that there was no notation of a search warrant, and that he was merely speculating that one might be involved.

During re-cross examination of McCoy, he agreed that the Respondent indicated on the telephone that she was checking for a friend or relative but did not elaborate on a specific relationship. He agreed, again, that IAB personnel informed him that the information he told the Respondent should not have been released to her. McCoy stated that at the time, the Respondent could have obtained the same exact information herself using her access codes for the OLPA system.

The Court inquired of the witness the manner in which searches are conducted. The witness explained that the initial search is by last name, and thereafter a list of all defendants in the system who are in pre-arrangement status will be displayed. The witness further acknowledged that his start of the [REDACTED] query was by name.

Lieutenant Joseph Ferrara

Ferrara has been a member of this Department for thirteen years and is presently assigned to LAB Group 26 and has been so for about two months. Prior to his promotion, he was a sergeant in Group 53 from April of 2004 to December of 2006.

Ferrara testified that he became involved with the Respondent when he was working in Group 53. Specifically, he indicated that in possibly May of 2004, a case was reported to Group 53 by Queens Narcotics Major Case Unit. An allegation was made, relating to their investigation of [REDACTED], that his spouse was the Respondent and a member of this Department. This case was assigned to Ferrara, and at this point he began an investigation. Namely, he commenced a series of checks in order to ascertain the relationship between the Respondent and [REDACTED]. He examined the Respondent's personnel folder, and determined that [REDACTED] was actually the Respondent's brother and this shifted the focus of Ferrara's probe to criminal association because he explained that [REDACTED] "was the subject of a narcotics investigation." Background checks also revealed that [REDACTED] was residing in the same house as the Respondent.

The focus of the investigation subsequently shifted. Upon checking prior IAB logs ("IA-Pro" logs), Ferrara ascertained that the Respondent had been the subject of a 1996 log whereby it was alleged that she was "depositing money into her bank account for her drug dealer brother." Based upon this information, Ferrara explained that the investigation of the Respondent was now focused on "ties to narcotics, or any kind of ties to money laundering, or money involved based on that previous allegation that was stated." Ferrara remained in contact with the Queens Narcotics Major Case Unit via Sergeant McNulty.

In July of 2004, Ferrara learned that [REDACTED] had been arrested. Ferrara explained that McNulty informed him that it appeared that [REDACTED] and the Respondent were related. He

examined the Respondent's personnel documents (form PA-15, specifically) again and determined that [REDACTED] was the Respondent's half-brother. Shortly thereafter, Ferrara also learned that McNulty's unit had been utilizing wiretaps pursuant to their investigations of [REDACTED] and [REDACTED]. On this wiretap, the Respondent was heard discussing [REDACTED]'s arrest with [REDACTED]. Ferrara explained that she was heard informing [REDACTED] that she "had called McCoy and obtained information about the arrest and that there was a wire tap involved in his arrest."

Ferrara explained that while he had an opportunity to listen to the wiretap he was unable to understand them because the conversations were conducted in Spanish, which he does not speak. Therefore, he asked Sergeant Aracena, who does speak Spanish, to listen to the tapes and provide a translation. Ferrara explained that the translation of the wiretap coincided with what McNulty had represented as the substance of the conversation. That is, that the Respondent telephoned [REDACTED] and informed him of [REDACTED]'s arrest, that she obtained information from McCoy and that a wiretap was involved.

Based upon the "McCoy" reference in the telephone conversation, Ferrara explained that he queried databases and identified this person to be Police Officer Kelvin McCoy of the Queens Court Section. McCoy was subsequently the subject of an official Department interview conducted by Ferrara. During the course of this interview, Ferrara explained that McCoy indicated that he worked with the Respondent from 1997 to 2000 and that they were friendly. The interview further revealed that he received a telephone call from the Respondent in July of 2004 whereby she was soliciting information regarding the [REDACTED] arrest. Ferrara further stated that McCoy stated that he provided the Respondent with the pertinent details – the charges, and that a wiretap was involved in the arrest.

Ferrara also stated that he conducted an official Department interview of the Respondent. The Respondent reiterated what was previously heard on the wiretap and she stated that she got the information regarding the [REDACTED] arrest from McCoy and that McCoy informed her of the involvement of a wiretap and that she subsequently passed this information to [REDACTED] during the telephone conversation. Ferrara explained that ultimately, the Respondent was suspended, "for the good order of the Department," subsequent to [REDACTED]'s arrest.

Further to the bail hearing for [REDACTED]'s arrest, the Respondent submitted documentation to obtain this bail. Ferrara explained that IAB was furnished with these documents for their investigation. He explained that her tax returns were compared with her bank statements, and there were discrepancies with respect to the receipt of income not being reported as such on the Respondent's tax returns. Ferrara explained, "So an investigation ensued into possible like tax fraud that she wasn't posting all the income that she was receiving on her income tax returns." Ferrara was unable to complete the investigation of the Respondent as a result of his promotion to Lieutenant in December of 2006. He did state, however, that the case remained within Group 53.

Ferrara testified that prior to leaving Group 53, the Respondent's case was being reviewed by the United States Attorney's Office. Prior to arriving at the US Attorney, the Corruption Bureau Chief of the Queens County DA's Office was reviewing the Respondent's bail-hearing testimony for possibly perjury in addition to the funds that were not reported on the tax returns submitted at the bail hearing. Ferrara stated that at some point in 2005, the DA's Office declined prosecution of the Respondent, whereupon the case went to the New York State Department of Taxation and Finance. They also declined to prosecute because the Respondent's conduct did not give rise to a felony charge.

The investigation of the Respondent for the "non-administrative patrol guide violation" continued. Specifically, Lieutenant Cerali of the Financial Investigations Unit of IAB continued with his financial investigation of the Respondent for the purpose of presenting it to the US Attorney. Ferrara stated that just prior to his promotion and departure from Group 53, he had a meeting with Assistant US Attorney Baner where she indicated that more information would be required for a prosecution of the Respondent.

Upon cross-examination, Ferrara agreed that those conducting the federal investigation declined to prosecute the Respondent. He further acknowledged that each entity that he submitted allegations to concerning the Respondent declined to prosecute her. Ferrara admitted that he also made allegations to the Internal Revenue Service. He is not aware of any agency that brought criminal charges against the Respondent.

Ferrara affirmed that he listened to a wiretap tape in Spanish which was translated by Aracena. He acknowledged that the incident which formed the basis for the specification charged occurred on July 6, 2004. With respect to the tape of the wiretap of the conversation, Ferrara stated that he listened to it "a couple of days after" July 6, 2004. He acknowledged that he filed a report on October 26, 2005, where he wrote:

I called Sergeant McNulty, narcotics major case, and informed him that the tape number 10504, cell number [REDACTED] was omitted from the rest of the tapes collected. The tape consists of the conversation between [REDACTED] and the subject regarding the arrest wire tap of [REDACTED]. This tape is needed for a Patrol Guide hearing.

Ferrara was asked how he had listened to the tape "a couple of days after" July 6, 2004, if he filed a report on October 26, 2005, indicating that he did not hear it as of that date. He explained that after A [REDACTED] s arrest, he responded to Queens Major Case Narcotics with Aracena and it was there that he was able to hear the tape.

It was later determined by IAB that each wiretap tape was to be transcribed. Ferrara opined that it was Chief Campisi who made this determination, and Detective Maldonado from Group 52 was assigned to complete the task of transcribing the 200 plus tapes associated with the wiretap. Ferrara explained that while Maldonado was transcribing, he discovered that a tape was missing and informed him of this fact. This missing tape was the tape containing the conversation whereby the Respondent was heard informing [REDACTED] about the [REDACTED] arrest and associated wiretap. Ferrara was asked what the location of that tape was, and he stated, "I don't know if it ever – I am not sure, but it was heard by Queens Major Case Narcotics who transcribed the tape initially."

Ferrara acknowledged that he completed a worksheet relative to his investigation when he listened to the July 6, 2004, tape of the wiretap. In reviewing his worksheet, he acknowledged two telephone calls on July 6, 2004: one at 3:43 p.m., and another at 8:23 p.m. He stated he heard both calls, and that his report reflects the latter to be from the Respondent's cell phone. He indicated that the calls were in Spanish and that he was informed of the context of the conversation. When questioned with respect to the 8:23 p.m. conversation, Ferrara stated that he was informed by Aracena that it was from the Respondent's cellular phone to [REDACTED]'s cellular phone.

Ferrara was asked to examine DX 3, the Respondent's Cingular statement. When directed to July 6, 2004, at 8:23 p.m., he indicated there were no telephone calls. For the same date, at 8:18 pm, he indicated there was a call to [REDACTED]. He was unable to say if this was [REDACTED]'s telephone number or not. He was asked if there were calls between the period of 8:23 p.m. and 8:29 p.m. and replied that there were none. He did identify calls at 8:15 p.m., 8:18 p.m., 8:21 p.m., and 8:34 p.m. He acknowledged that he was told by Aracena that the

Respondent called [REDACTED] s cell phone on her cell phone at 8:23 p.m. on July 6, 2004, and he agreed that the records are not reflective of this. He further agreed that he indicated on his worksheet a telephone call which does not appear on the Respondent's telephone bill.

Ferrara agreed that he conducted an official Department interview of McCoy, during which he admitted to giving the Respondent information from the notes section on the computer. He stated that he never determined who entered those notes on the computer, nor did he determine what computers contained those notes. Ferrara acknowledged that he never determined if the court's computer contained these notes, and he was not aware if Central Booking was releasing the wiretap information to any co-defendants that were arrested with

[REDACTED] Ferrara testified that McCoy acknowledged in his interview that the Respondent told him that the information was for a friend or a relative, and that she was not calling for the purpose of soliciting confidential Department information. That is, that she was not acting in her official capacity in calling McCoy. He affirmed that McCoy never informed the Respondent that she was receiving confidential information, and that McCoy was never charged with disclosing that confidential information. During the interview of McCoy, Ferrara informed McCoy that releasing the information was improper and McCoy indicated that he did so innocently.

Ferrara acknowledged that all of the tapes comprising both investigations were listened to by a Spanish-speaking officer, Maldonado, for the purpose of determining if there were drug related conversations between [REDACTED] or [REDACTED]. Ferrar testified that RX G and RX H were IAB Investigating Officer's Reports written by Lieutenant Ledda pursuant to his communications with Maldonado. After reviewing the two documents, Ferrara agreed that it was accurate to say that Maldonado listened to 119 tapes, comprised of conversations of [REDACTED] and [REDACTED] from wiretaps and that none of these conversations concerned "drug-related conversations" between

the Respondent and those parties. When asked if this was the case for the entire wiretap, Ferrara indicated that he was not sure, and that he was never provided with the exact number of tapes. When asked to examine RX H, Ferrara conceded that the document itself reflected a total of 123 audio tapes.

Ferrara expressed that he was unsure of when he was informed, or if he was ever informed, that the Respondent had never been heard discussing drug-related matters with either [REDACTED] or [REDACTED]

Upon inquiry, Ferrara explained that he took possession of 200 audio cassette tapes from the [REDACTED] wiretap on October 4, 2004, and that these cassette tapes were furnished by Sergeant McNulty of Major Case Narcotics. He indicated that he did not know where McNulty obtained the 200 tapes from. He added that an additional 16 tapes were from the [REDACTED]

[REDACTED] wiretap. Ferrara was asked about the manner in which he stored the cassette tapes. He stated that he "held onto them until they decided who was going to transcribe the tapes. . . . They sat in the box underneath my desk." He further testified that this box was not locked. Ferrara was unaware if Maldonado completed the transcriptions of each tape in this box, and explained that he received a disk with the transcriptions. The tapes were subsequently returned to McNulty. He acknowledged, again, that there were approximately 200 tapes from the [REDACTED] [REDACTED] wiretap and 16 from the [REDACTED] wiretap, and that these tapes were under his desk. And, he acknowledged, again, that none of the tapes indicated that the Respondent was involved in any drug activity.

Ferrara acknowledged that he subpoenaed "a ton of records" relating to the Respondent. He stated that the bank records obtained went back to 1996 or 1997, and that they were from Queens County Savings Bank and Citizens Bank in Rhode Island. These consisted of checking-

account and investment records. Because he is not a financial investigator, Ferrara explained, he was advised of what types of records to request. He acknowledged requesting telephone records, from Cellco Partnership and Cingular, and that it "probably" encompassed a period greater than one year. Ferrara also affirmed that he subpoenaed real estate records, performed a Yahoo! search "on Maria Villar for Miami and New York," and examined her pay detail report from January 1, 2003, to June 26, 2004, and her employee leave detail report from January 1, 1998, to July 7, 2004.

Ferrara has worked in IAB for a period of four years. He affirmed that neither he nor any other party requested to have charges preferred against the Respondent for any other violation other than the single specification charged herein.

With respect to McCoy's official Department interview, he was questioned as a subject, and no charges were ever preferred against him. Ferrara agreed that the only charge that was preferred relative to his investigation was the charge against the Respondent. He acknowledged that in the course of his investigation, he never ascertained what information was contained on the "public computers." He does not know what returning to a court with a return or sealing order is for wiretaps, and he did not know if any police officer had done so concerning the wiretap discussed herein. Ferrara never spoke to Fusco to see if the wiretap was closed prior to the conversation with the Respondent and McCoy, and conceded that it would have been appropriate to do so as a part of his investigation.

Ferrara acknowledged that at the time that the Respondent had the conversation with [REDACTED], he never investigated whether the wiretap discussed on this conversation was confidential. He did agree he requested that charges be preferred against the Respondent for divulging confidential information. He explained, "I believed [the wiretap] to be confidential

based on the note that it was a wiretap, and wiretaps aren't public information before there is an arrest made." However, he affirmed that the Respondent gave the information to [REDACTED] more than 24 hours after the arrest had been made. When confronted with this, Ferrara agreed that it could not be said that the information was therefore confidential and may have, at that point, been information that was available to the public, the court, and its personnel. How the wiretap information came to exist on the OLPA computer was never investigated, nor was who put the information on it. Ferrara also did not know who has access to the OLPA system, or who has access to put information into the system.

Pursuant to his investigation, Ferrara acknowledged that "basically," he "subpoenaed as many financial records as you or members of the Department could think of covering the period of time involved in this case." With respect to the Respondent's official Department interview, he explained that he was not allowed to ask her to bring the records in because of the fact that there was an ongoing criminal investigation. When asked about the 1996 IAB allegation against the Respondent, Ferrara indicated that it was unsubstantiated. He also acknowledged that the Respondent was not the subject of any charges as a police officer.

Ferrara acknowledged that there is a Financial Investigations Unit of the Internal Affairs Bureau and that he conferred with Lieutenant Lavanti from that unit regarding his investigation of the Respondent. He stated that several synopses were prepared pursuant to this investigation, and that the case was discussed with both the Criminal Division of the US Attorney's office, and Assistant US Attorney Baner of the US Attorney's Asset Forfeiture Division. The witness acknowledged that the function of the latter is to recover laundered and drug-related funds. He stated that all of the information that he obtained relative to the Respondent in the investigation was submitted to the US Attorney's office, and that they took no action against the Respondent.

On re-direct examination, Ferrara recalled being asked an inquiry relative to the wiretap on [REDACTED]. That is, if he had any knowledge of this wiretap being returned or closed by the Queens Major Case Narcotics. Ferrara explained that at the time of the investigation he was assigned to IAB Group 53, and that it was Queens Major Case Narcotics who sought and received the wiretap. He stated that he was not a member of this command at the time of the investigations into [REDACTED] and [REDACTED], and did not know about the investigations or the wiretap until the matter in the instant case was brought to his attention at sometime in May of 2004. He was not personally involved in the narcotics investigation.

Regarding the inquiries on cross-examination with respect to Aracena's accuracy in his transcriptions of the wiretap, Ferrara stated that he took what he was told by Aracena and compared it to the transcription from Queens Major Case Narcotics. He then explained that he took that information and compared it with the Respondent's responses in her official Department interview and discerned that all were "very close" in meaning.

With respect to the charge that Ferrara asked to be preferred against the Respondent, in examining the actual specification, he stated that it was for "divulging official Department business."

On re-cross examination, Ferrara acknowledged that in his request for charges, he wrote, "A request for charges and specifications was drawn up and faxed to the Department Advocate's Office for a violation of divulging confidential information during an official investigation." Ferrara further acknowledged that the Respondent was not charged with divulging confidential information.

Upon questioning by the Court, Ferrara stated that he did not ask the Respondent what telephones she used on a regular basis, or what her home and cellular telephone numbers were.

He explained that subpoenas were requested and issued to ascertain what the Respondent's landline and cellular telephone numbers were.

The Respondent's Case

The Respondent testified in her own behalf. She also called Elba Castro as a witness. Further entered into evidence were a copy of a Property Clerk's Invoice relating to the [REDACTED] [REDACTED] arrest (RX A), a copy of the Criminal Court Complaint relating to the [REDACTED] [REDACTED] arrest (RX B), a copy of the Line Sheet from Plant 105 (RX C), a copy of the Pen Register of Calls to [REDACTED]'s telephone (RX D), a copy of a portion of the record of the [REDACTED] criminal proceeding (RX E), a copy of an affidavit of Elba Castro (RX F), and copies of two IAB investigating officer's reports (RX G and RX H, respectively).

Elba Castro

Elba Castro is a 46-year-old resident of Queens County and is employed as a dental assistant and has been so employed for approximately 20 years. She stated that she has never been arrested or convicted of a crime.

Castro stated that [REDACTED] was her daughter's father. She further stated that it came to her attention that [REDACTED] had been arrested on the morning of July 6, 2004, when she contacted his place of employment and was informed that he had been arrested. She explained that she went to the Queens County Criminal Court because she "wanted to know what was going on, what happened," and that she was going there to bail him out. She arrived at the courthouse in Kew Gardens between 6:30 and 7:00 p.m., after traveling from her workplace in Downtown Brooklyn.

Upon arriving at the courthouse, Castro went downstairs, to the basement where the arraignment part is located. In addition to there being a courtroom, she explained, "to my right, there is another room where I entered where there was a glass, and offices on the other side." She stated that one of these offices was an information office with a window on the front of it, and there were personnel behind this window. Castro explained that there came a point where she had a conversation with the person on the other side of this information window. The witness described the conversation that she had:

I approached the window, I gave him my daughter's father's name, [REDACTED] I wanted to know what was going on. I heard that he was here. He says yes, he is. But I don't have good news, he might not come out tonight. . . . He said this is a long-time investigation going on. . . . There have been recordings, phone recordings. There were videotapes, videos, tapes and phone recordings. . . . I said it can't be possible. . . . He said it's right there.

Castro stated that she had this conversation with an individual wearing a uniform, standing behind the information window. She was further told by the individual at the information window that if [REDACTED] was being arraigned that evening, that she might need a lot of money for the bail. She explained that [REDACTED] was arraigned later that evening and released on his own recognizance. Castro indicated that her daughter is presently 16 years old, but was 12 at the time of [REDACTED]'s arrest.

Castro agreed, upon cross-examination, that she was concerned about [REDACTED]'s well being relative to learning about his arrest. She explained that she left work in the evening, in Downtown Brooklyn, between 5:00 and 5:30, and arrived at the courthouse prior to 7:00. She took the A train, and then transferred to the J train arriving at Queens Boulevard. Castro indicated that at the time that she learned about [REDACTED]'s arrest, she was not aware of any other co-defendants being arrested with him. She explained that it was not until a later time that she

learned from [REDACTED] that "somebody wanted to speak to me because of information they had gave me." She indicated that at that time, she was not interested in speaking with anyone, but that she eventually did and that this person was "Maria," the Respondent. She explained that she was informed by [REDACTED] that the Respondent wanted to speak to her about the information that she received as "a public citizen" from the information window at the Criminal Court relating to [REDACTED] s arrest. Castro indicated that she was contacted by an attorney and she signed an affidavit thereafter.

Castro stated that she was not informed of the [REDACTED] arrest by the court employee at the information window. She affirmed that the employee did use the terminology "phone tap" and "video recording," and upon questioning by the Court, indicated that the exact words were "wire recordings with phone taps on that." Castro indicated that it was out of concern for [REDACTED] that she obtained this information and that she did not get the court employee's name who furnished her with the information. She said that she did not speak with any other individuals once she learned the magnitude of the case.

On the evening of [REDACTED] s arrest, after receiving the information from the information window, she testified that she remained in the courtroom and eventually observed the arraignment of [REDACTED]. She does not have a recollection of the District Attorney's argument for or against bail.

Castro denied that she was ever a member of this Department. She asserted that she first spoke to the Respondent sometime in 2007, and she completed an affidavit, and offered that she wanted to help "this person." She asserted that was the only point where she had ever seen or met the Respondent before. She testified that she never learned about any co-defendants in the

[REDACTED] case, and that she does not know who [REDACTED] is. She stated that she does not know the relationship between the Respondent and [REDACTED] nor does she know who [REDACTED] is.

On re-direct examination, Castro affirmed that she signed an affidavit in 2007, and identified it as RX F. On re-cross examination, Castro stated that after she completed the affidavit, it was provided to "the investigator," and that this investigator was employed by the Respondent. When asked about where the affidavit went, or to whom did it go, she stated, "I have no idea." At this point, counsel for the Respondent stated that the affidavit went to him. Castro was unsure if the affidavit went to any other parties.

Upon inquiry by the court, Castro said that she had broken up with [REDACTED] about a year prior to 2004.

The Respondent

The Respondent was appointed to this Department in 1995, and presently holds the rank of Lieutenant. She is assigned to the Building Maintenance Section. She stated that after spending the first two years of her career at Police Service Area 4, she worked in Queens Central Booking from 1997 to 2000. Thereafter, she was promoted to Sergeant and then to Lieutenant in November of 2003. Prior to the instant case, she had last worked in the School Safety Division until July 7, 2004, when she was suspended.

The Respondent testified that prior to the matter herein, she had never received charges and specifications. She received commendations when she was a Sergeant in the 115 Precinct. She has one full brother, [REDACTED] and two half brothers, [REDACTED] and [REDACTED]

[REDACTED] She explained that in July of 2004, she was living at 84-25 105th Street in Queens with her mother, [REDACTED] his wife and his baby. [REDACTED] was residing on 108th Street in Queens.

At that time, she had a cellular phone and the number was [REDACTED], and her landline home telephone number was [REDACTED]

On July 5, 2004, the Respondent explained that she found out that [REDACTED] was arrested. She received a telephone call on this date at 9:21 p.m., on her cell phone and identified this call as number 118 on DX 3. The substance of this conversation was [REDACTED] informing the Respondent that he had been arrested and for the Respondent to notify his wife. She explained that at this time, she had the opportunity to speak to an officer involved in the arrest and he indicated that it was for narcotics. With respect to the next call on this statement, number 119, the Respondent testified that this six-minute call was to [REDACTED]'s wife whereby she is informing her of his arrest.

On July 6, 2004, at 1:52 a.m., the Respondent stated that she received a telephone call from [REDACTED] while he was at Central Booking in Queens. She received the call on her cell phone, from [REDACTED] and from working at Central Booking, knows this to be a telephone number there. During this 14-minute conversation, she explained that [REDACTED] told her he was arrested, and that he did not do anything and that he "was just with someone." He informed the Respondent that he had been informed by the officer that arrested him that he was going to be released at 9:00 a.m. upon seeing the judge for arraignment. The Respondent later telephoned the arraignment part at 12:03 p.m. on that date, at [REDACTED], call number 126. She clarified that this line rings in the actual courtroom. During this six-minute conversation, the Respondent inquired if [REDACTED] had been released, and "he told me to forget about it, that he was not going to be released because there was a whole investigation that they had wire taps, that they had phone recordings, there were search warrants, and so forth." She testified that this phone conversation

was with the person answering the court clerk's telephone and that this conversation occurred before she called McCoy.

Directly after this call, the Respondent called her brother [REDACTED] at [REDACTED] and had a three-minute call with him where she informed him of [REDACTED]'s arrest and "that it was a big case, that they had wire taps, that they are talking about a big case." Thereafter, she called [REDACTED]'s wife at [REDACTED] and informs her, "I told her the same thing. I said you have to go to court because at arraignment they told me that he has a big case. There is a big investigation. I don't know what's going on."

During her official Department interview, the Respondent asserted that she was never afforded an opportunity to provide any explanations for the record, whereas McCoy was permitted this opportunity during his interview. During the interview, she was asked only about her conversation with McCoy and whom she spoke with after that conversation. She was not asked if she had received any information prior to the McCoy conversation, nor was she asked if she had learned of the wiretap from any other sources despite the fact that the arraignment personnel informed her of this fact.

The Respondent testified that she made some telephone calls at her residence. She also stated that the first time she contacted McCoy was approximately 3:40 p.m. on July 6, 2004, when she called him from her office at the School Safety Division. She indicated that she informed McCoy that she wanted to check the status of a relative's case, [REDACTED]. McCoy informed her that the case was not yet court ready, that there were narcotics charges, and that there was a wiretap. The Respondent testified that she already knew about the existence of a wiretap and that she had already discussed this with [REDACTED] on the previous telephone calls to his cell phone that day. She spoke to [REDACTED] again after the first McCoy conversation and

informed him of the gravity of the case and the fact of the wiretap. She was never informed that the wiretap was a secret, or that it was official Departmental business. She was not told not to repeat the information.

Regarding the initial conversation with McCoy, the Respondent expressed that the two were well acquainted. She stated, "Me and Officer McCoy were – I still consider him to be a very good friend of mine." To that end, she did not identify herself as a police officer, but rather explained that [REDACTED] was her relative. She indicated that her first call to McCoy was on her office telephone, and she then spoke to him subsequently from her cell phone at 3:45 p.m., call number 138 on DX 3. It was directly after this call, the Respondent explained, that she telephoned [REDACTED], then [REDACTED]'s wife, and then [REDACTED]'s wife a second time to tell her to go to the courthouse. Subsequent to this call, she testified that she contacted the Queens Central Booking EAP office at [REDACTED] where McCoy was working, and she spoke to him again. She stated that she again asked if the case had been sent to court, and he replied that he did not know and inquired why she was calling so much. She explained that it was her relative and wanted to relay whether or not it was ready to [REDACTED]'s wife. The Respondent explained that the EAP office is next to the sergeant's room where the calls from the public come in. The sergeant maintains a chronological list of the status of cases in Queens, on a computer system called KRONO.

The Respondent said she "would never deny" the fact that she told [REDACTED] about the wiretap from [REDACTED]'s arrest. She maintained that she obtained this information first from the personnel in the arraignment part, and then McCoy, and that she was never told it was confidential. She further opined that the information was already on the court computer.

The Respondent testified that she had been "investigated up and down." She denied that she has ever laundered drug money or committed perjury. She has never committed tax evasion, and affirmed that she received a communication from the IRS indicating that there was nothing wrong with her taxes. She never had any meetings regarding her bank records with anyone, nor was she asked to supply any records thereof.

She has taken and passed the examination for promotion to Captain, and has been passed over for promotion five to six times. She is presently on modified assignment and has been so for the past four years.

On cross-examination, the Respondent stated that she has three brothers, one of which is by full blood. [REDACTED] is the eldest. While she did not grow up with the two half brothers, she affirmed that she had formed a close relationship with them. She agreed that upon learning about [REDACTED]'s arrest, she was concerned. Her nickname for [REDACTED] is "[REDACTED]"³ and she calls [REDACTED] "[REDACTED]." The Respondent indicated that [REDACTED] his wife and his child had been living with her since March of 2004.

The Respondent acknowledged that she received a call on her cell phone telling her about [REDACTED]'s arrest, while she was having dinner with some friends in the Bronx. She was not scheduled for duty until the next day, July 6, 2004. She indicated that it was at about 9:21 p.m. when she received the call informing her of the arrest, and that it was a police officer informing her of this fact. She did not know this officer's name.

The Respondent acknowledged that she telephoned the arraignment part on July 6, 2004, to see if [REDACTED] had been released. She was informed that he had not been released and that it was a big case and wiretaps were involved. She affirmed that this call was made prior to her call

³ Specifically, the Respondent answered "[REDACTED]" to the Advocate's question: "Do you have any nicknames for [REDACTED]? Does he go by any other name?"

to McCoy, and she maintained that she had been informed that the charge was an A-1 felony. She agreed that at this point, the only information she did not know was if the case was court ready. She acknowledged that the arraignment part has the ability to ascertain if a case is court ready on the computer. The Respondent telephoned the arraignment part again later that day, from her house and determined that [REDACTED] had been held on \$10,000 bail. This came to her attention after speaking to McCoy, and after her discussion with him regarding his thoughts on [REDACTED]'s eligibility for bail.

With respect to her calls to McCoy, the Respondent indicated that she never asked McCoy for any information pertaining to the arrest number, the specific charges or details about who the case was assigned to. She agreed that her purpose of calling McCoy was to ascertain if the case was court ready. The Respondent acknowledged that the arraignment part can supply the same information as McCoy. She called the part after McCoy to get bail information.

The Respondent affirmed that she was appointed to this Department in 1995, had thirteen-and-a-half years of experience, and that she has had opportunities to act in a supervisory capacity in her career. She was promoted to her current rank in November 2003.

Upon questioning regarding her duties at Queens Central Booking, the Respondent explained that she never had the occasion to work on the KRONO system, as it was only handled by supervisory personnel and she was a Police Officer at that time. She worked in this command from 1997 to 2000, and worked in Intake and the EAP office. She explained that she handled prisoners initially, and then worked in Intake typing affidavits. In this capacity, the Respondent agreed that she handled telephone inquiries and had the occasion to speak to the public. She agreed that the purpose of the telephone calls would usually be to ask information regarding arrests, and she agreed that she supplied the information to the callers if that information was

available. Upon the Court's inquiry, the Respondent said that the officers in Central Booking were authorized to tell family members of a defendant the arrest number, charges, and whether or not it was in court. She testified that she did not give out information with respect to other details such as evidence found on the defendant or "other details pertinent to the People's case."

The Respondent acknowledged that an official Department interview was conducted of her in March of 2006. She testified that it was not that she never explained to anyone during this interview that she knew about the wiretap prior to the McCoy conversation. Rather, the issue was that no one asked any questions regarding this. She never requested a recess during the official Department interview. Upon learning of the Departmental charge against her, the Respondent indicated that she never contacted IAB to inform them that she had known about the information prior to speaking to McCoy.

When asked about why she continued to call McCoy on July 6, 2004, regarding [REDACTED] s arrest, the Respondent explained that she wanted [REDACTED] s wife to be present for the arraignment. Because she was informed that the charge was serious, she sought to know the status of the case as to whether or not it was court ready. While she conceded that she did contact the arraignment part, she elected to continue to converse with McCoy because "at intake, they give you a better update of the case." She agreed that she considered McCoy to be a friend.

During re-direct examination, the Respondent indicated that she was the subject of an investigation by IAB and that she was suspended in 2004. She agreed that statements made to IAB can be used against you. According to the Respondent, she was never informed of the subject of the investigation.

Upon inquiry by the Court, the Respondent testified that after learning of [REDACTED] s arrest, her next tour was 10x6 on July 6, 2004. She stated that she was the administrative lieutenant in

the School Safety Division. When questioned about the OLPA system, the Respondent testified that she could access that application from any Department terminal. But, she indicated that she did not do this because one is not supposed to use Department computers for personal business. This, she said, is why she elected to call the Court. Lastly, she stated that it is her understanding that the personnel answering the arraignment part telephone line are New York State court employees, and not from this Department.

FINDINGS AND ANALYSIS

The Respondent is charged with wrongfully discussing or divulging official Department information with her brother, [REDACTED] In this forum, the Department has the burden of proving the Respondent's guilt by a preponderance of the credible evidence. It did prove, by a preponderance of the evidence, that the Respondent disclosed to [REDACTED] that their half brother [REDACTED] had been arrested, and that it was a major case involving a wiretap and a search warrant. It also proved that the information was "official" and that the Respondent's disclosure of it to her brother was wrongful. Therefore, the Respondent is found Guilty.

Fusco, of Queen Narcotics, testified that his command was investigating [REDACTED] who worked at JFK Airport as a baggage handler and was allegedly smuggling drugs through airline traffic. [REDACTED] s phone was being wiretapped. The narcotics investigation led to [REDACTED], and a wiretap was opened on his phone as well. On July 5, 2004, [REDACTED] was arrested. The next day, Fusco testified, the investigators intercepted and captured two calls from the Respondent to [REDACTED] concerning [REDACTED]'s arrest. The first call was made at 3:43 p.m. from [REDACTED], the Respondent's cell phone. She told [REDACTED] whom she referred to as [REDACTED] that "the kid hasn't seen the judge yet. And I was talking to McCoy because he works in the court, and according to

what the complaint says they had him under investigation and I don't know what what. They have him recorded and this and that so I don't know. We[']re talking about a big case" (see DX 1).

The second call was made at 8:23 p.m. from [REDACTED], which the Respondent testified was the landline of [REDACTED]'s wife. During this call, the Respondent said that "they just sent the folder to court" and [REDACTED] "will see the judge tonight." She was "waiting for a call to see if they tell me how much the bail is[]going to be but they might not even give him bail." The Respondent told [REDACTED] that she "found out it was a search warrant . . . it is when they get an order from the court and they get in to the house they recorded communications they intercept his telephone." When [REDACTED] remarked, "So they w[e]re behind that kid then," the Respondent said, "Yes because it was investigation that was going on for a long time I have been telling him [REDACTED] [the Respondent testified this was a nickname for [REDACTED]] be careful that they grabbed [REDACTED] two or three times I told him . . . that maybe they are . . . intercepting those services from that shit." The Respondent added that "they have him charged with twenty first degree that do[es]n't get bail," and "what is he saying what he had in possession a cut." The Respondent told [REDACTED] that "if that goes to the lab[r]atory you see and it comes but that it wasn't drugs then there is no case but it all depends on the investigation that they have I don't know" (see DX 2).

The Department represented that the tapes of these wiretapped conversations were lost at some point during the criminal proceedings against [REDACTED]. Through Fusco, the Department presented evidence that Spanish-speaking members of the service listened to the tapes, made transcripts of them, and informed Fusco that the Respondent was recorded speaking to [REDACTED]. The Respondent never denied that she made the two phone calls. She claimed that the phone number that made the second call to [REDACTED], [REDACTED] was the landline of [REDACTED]'s wife.

[REDACTED] and [REDACTED]'s wife and child, however, lived with the Respondent, although the Respondent testified that she had a separate landline, [REDACTED]. The Respondent presented an IAB worksheet dated October 28, 2005, stating that Maldonado, a Spanish-speaking detective, listened to 123 wiretap tapes, and that while the Respondent's voice was intercepted, "there were no conversations relating to drug activity." However, Ferrara, the IAB investigator testified that he filed a report on October 26, 2005, indicating that he contacted Queens Narcotics and notified them that the tape which "consists of the conversation between [REDACTED] and the subject regarding the arrest wire tap of [REDACTED]" was missing, and that IAB needed it for their investigation, specifically an official interview.

In any event, the Respondent admitted that she called [REDACTED], and told him that [REDACTED] had been arrested for narcotics, that he had not seen a judge yet (i.e., the case was not "court ready"), and that his case was "a big case" involving wiretaps. Therefore, the Department proved that the Respondent did "divulge or discuss" the information about [REDACTED]'s case with [REDACTED].

The Court also finds that the details she gave [REDACTED] constituted "official Department business." Contrary to her attorney's presentation at trial, the Respondent, who was not only a Lieutenant but who had worked in Central Booking for three years, did not need Police Officer McCoy to inform her that details such as the charges and the existence of a wiretap was "official" information.

The sole remaining issue is whether the Respondent's actions were wrongful and without authorization within the meaning of the Patrol Guide. Certainly, the Respondent did not have authorization to give any information to [REDACTED]. Further, the Court finds that the Respondent's disclosure was wrongful.

Several facts in this case point to the conclusion that the Respondent was seeking as much information as possible from the Department about [REDACTED]'s case and that she knew her conduct was improper. The Respondent testified that after finding out [REDACTED] had been arrested, she first contacted the arraignment part in Queens. She claimed that she found out from the part that [REDACTED] was arrested on a Class A-1 felony, and that his case involved wiretaps and search warrants. She also already knew that it was a narcotics matter because the officer that called her right after [REDACTED] was arrested told her so. She testified that she called McCoy, her friend at the Queens Court Section, to find out if [REDACTED]'s case was "court ready," i.e., whether the case was actually ready for arraignment, and why it was not yet in court. She also asked McCoy if [REDACTED] would get bail, but McCoy said he did not know. The Respondent admitted, however, that she could have obtained the court-readiness information from the arraignment part, but instead called McCoy "[b]ecause at intake," the Queens Court Section area near where McCoy worked, "they give you a better update of the case." McCoy testified that the Respondent asked him about several non-public details, such as what kind of bail would be set by the judge, and what assistant district attorney was working on the case. This demonstrates that the Respondent was not simply trying to obtain publicly-available information, but was attempting to get additional details that a fellow Department member would tell her.

The Respondent's testimony as a whole, her cell phone statement (DX 3), and the memorialized wiretapped calls, cast doubt on her assertion that the arraignment part told her, the first time that she called, that there were wiretaps involved in [REDACTED]'s case. The Respondent identified call number 126 as the call she made to the arraignment part at [REDACTED]. This call took place at 12:03 p.m. on July 6, 2004. Right after she got off the phone, at 12:08 p.m.,

she called [REDACTED] s cell, call number 127. She claimed that she told [REDACTED] about the wiretaps during this call.

However, the call in DX 1 did not take place until 3:49 p.m., right after two calls to McCoy, one from the Respondent's office phone at the School Safety Division, and one from her cell phone (call no. 138 on DX 3). The Respondent agreed that in the first call to McCoy, he had informed her of the wiretaps from [REDACTED] s case.

The problem for the Respondent's credibility with respect to when she first told [REDACTED] about the wiretap is that the conversation in DX 1 portrays the Respondent telling [REDACTED] about [REDACTED] 's being recorded for the first time. In the conversation, she acknowledges that it was McCoy who told her about this. She told [REDACTED] that she "was talking to McCoy because he works in the court, and according to what the complaint says they had him under investigation. . . . They have him recorded and this and that so I don't know. We[']re talking about a big case." If she had truly found out about the wiretaps at noon from the arraignment court, and had called [REDACTED] right thereafter, the tenor of DX 1, more than three hours later, makes no sense. It is more likely, the Court finds, that the arraignment part did not give the Respondent the information she was seeking, and that she called McCoy to get details about [REDACTED] 's arrest that a non-member of the service could not obtain.

On a related point, the Court does not credit the testimony of Elba Castro, the mother of the child of [REDACTED] [REDACTED] 's co-arrestee. [REDACTED] testified that she went in person to the public information office in the arraignment courtroom area, and was told that there were wiretaps involved and that [REDACTED] was unlikely to be released from custody. There was ample evidence, however, that the details [REDACTED] claimed to have learned would not be divulged to the public. McCoy testified that he did not give information in the "notes" section of OLPA to

public callers, and the Respondent acknowledged that she did not give the public details about the People's case, like evidence against a defendant. In any event, her testimony is irrelevant, because even if [REDACTED] did get this information from the court, the evidence, as outlined supra, shows that the Respondent did not, and sought to use her position as a Department member and McCoy's friend to get it from him. Also, [REDACTED] testified that she got to the courthouse around 6:30 or 7:00 p.m. Thus, there was no showing that the public information office, shortly after noon when the Respondent called, would have had the information it allegedly later gave [REDACTED]

Finally, the evidence demonstrated that the Respondent knew that the information she divulged to [REDACTED] was the kind of official Department information that should not be given out to the public. She said that when she worked in the Queens Court Section, she was authorized to tell the public the arrest number, the charges, and if the case was court ready or "it's probably going to be in court at a certain time." She did not, however, give out information "such as the evidence that was found on this individual, if any, if there were any details that seemed to be pertinent to . . . the People's case." Yet this is the exact sort of information the Respondent gave to [REDACTED]. The Respondent found out that there was a wiretap involved in the case, that there may have been a search warrant also, and that [REDACTED]'s arrest was a major case and he might not get out of custody that night. Thus, the Respondent knew that it was wrong for her to give out that information.

There was differing testimony as to whether the Respondent told McCoy, at the outset, that she was calling for her half brother, as opposed to making an inquiry for police business. McCoy testified that when the Respondent first called her, she "said listen, someone got arrested," and gave the name [REDACTED]. The second time the Respondent called, "she told me that she wanted to know what to tell the guys – I don't know if it was a relative, wife, whatever,

friend, but she wanted to know information about what to tell the people so they would know how to go about handling their end of the situation.” She did not tell McCoy that [REDACTED] was her half brother during these conversations.

McCoy recalled testifying at his official Department interview, however, that when the Respondent first called him, she said, as to “[w]hy she was making the inquiry,” that “[i]t was either a friend or a relative. And she said that his wife was calling me – meaning her – the wife is upset and the wife wants to know what’s going on with the case.” At trial, McCoy denied that the Respondent might have said that she was calling about a relative, and insisted that “her exact words to me were someone was arrested.” He later said that he did not recall the Respondent’s exact wording. Nonetheless, McCoy admitted that he said during the interview that the Respondent told him that “[REDACTED], the person she is making inquiry of, was either a friend or relative.”

The Respondent testified that she told McCoy, the first time she called, that [REDACTED] was a relative. She also testified, however, that when she called McCoy a third time, he asked her “why is it that you are calling so much. I said this is my relative, and you know, I wanted to know if his wife can go to court. . . . I wanted her to go to court when this case was ready in court.”

Thus, the Respondent testified that she was calling McCoy on behalf of [REDACTED]’s wife, and that she was upfront with McCoy about her purpose. McCoy confirmed that the Respondent told him she contacted him on behalf of a “friend or relative.” In fact, the evidence shows that an unstated purpose was to obtain details about [REDACTED]’s case and then divulge that official Department business to [REDACTED]. For instance, the Respondent admitted calling McCoy at 3:45

p.m. on July 6, 2004. This was the call memorialized as DX 1. Yet right after this call, she first called [REDACTED] and told him about the wiretap, before next calling [REDACTED]'s wife.

Moreover, while bail is mentioned by the Respondent in the second call to [REDACTED] (see DX 2), the conversation is not so much about bail, but more about what the consequences of [REDACTED]'s arrest would be. The Respondent talks to [REDACTED] about the search warrant and the fact that the authorities had [REDACTED] under investigation. She even says that in light of what she heard [REDACTED] was charged with, bail was not going to be set. This demonstrates that, contrary to the Respondent's testimony, she was not simply concerned with letting [REDACTED]'s wife know when to come to court for the arraignment. Instead, she was contacting McCoy in order to disseminate official Department business for non-Department purposes, i.e., to keep [REDACTED] apprised of what was happening with [REDACTED]'s case.

The evidence also demonstrated that the Respondent was trying to avoid a paper trail that would show she was seeking information about [REDACTED]'s arrest. McCoy testified that when the Respondent first called him and asked her to look for information, he asked her why she couldn't look it up herself, because "you worked here before, you have the code, you can go into the computer where you work at." McCoy recalled that the Respondent answered either that the computers at her command did not work, or she did not know how to access the system. The Respondent testified that she had access to OLPA from her worksite, the School Safety Division, but she did not "just look it up" because "[y]ou are not supposed to use Department computers. . . . That's why I decided to call the court." That is, the Respondent knew she was not supposed to use Department computer information systems for non-Department purposes, like finding out if her brother had been arrested. It was just as improper to do through McCoy what she was forbidden to do herself.

Nor is it a defense that McCoy discussed or divulged official Department business with the Respondent, but went uncharged. "Other people did it too" is not a defense in this forum.

Cf. People v. Blount, 90 N.Y.2d 998, 999 (1997) (to demonstrate selective prosecution in a criminal case, "there must be not only a showing that the law was not applied to others similarly situated but also that the selective application of the law was deliberately based upon an impermissible standard such as race, religion or some other arbitrary classification."). In any event, McCoy and the Respondent were not similarly situated. McCoy divulged the information to a fellow Department member. That is not to condone his actions, far from it, but they are vastly different than those of the Respondent, who sought out official details of S [REDACTED]'s arrest in order to disseminate them to her family members.

Accordingly, the Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on April 30, 2005, as a merged member from the Housing Authority Police Department. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of divulging or disseminating official Department business to her brother, Alberto Villar, concerning the drug-related arrest of their half brother, Sergio Delossantos. The Department recommended a penalty of termination. This Court agrees that the penalty for the Respondent's misconduct should be dismissal from employment with the Department.

The Respondent's attorney presented this matter as one in which the Respondent innocently passed on information she received from another member of the service. That is not a sufficient explanation of her conduct. Here, upon finding out that [REDACTED] was arrested, the Respondent did not simply act as a concerned relative with knowledge of the criminal justice system. Had she done so, she might have told [REDACTED] s wife to go to the courthouse, get a lawyer, and make bail arrangements. Instead, the Respondent took it upon herself to play a lead role in her family's attempts to coordinate their efforts surrounding [REDACTED] 's arrest. In fact, the phone records show a much deeper involvement than that testified to by the Respondent. Between 9:21 p.m. on July 5, 2004, when the Respondent said she first learned of the arrest, to 12:55 p.m. on July 7, 2004, there were fifteen calls between her cell phone and either [REDACTED] s cell, [REDACTED] s wife's landline, or [REDACTED] s landline.

Further, the Respondent wrongfully used her position as a Department member to obtain information that would not normally be available to the public. The evidence demonstrated that the Respondent first called the court itself to try and obtain information. But when she did not get the information she wanted, either because the court did not have it or would not give it to her, she called her friend at Central Booking, Police Officer McCoy, and asked him to give it to her. And she did not just do this once: she called McCoy at least three times on July 6, 2004, to pump him for additional information. The Respondent's testimony showed her reasoning: she called McCoy "[b]ecause at intake, they give you a better update of the case."

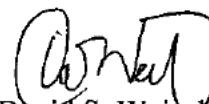
The crux of this case was the Respondent's revelation to [REDACTED] that there was a wiretap in [REDACTED] s case. The Respondent was able to obtain this official Department information because she misused her position as a Department member. Moreover, she admitted that when she worked at Central Booking, she did not give public callers "details pertinent to the People's

case," such as evidence recovered from the defendant. She had to know, therefore, that the existence of a wiretap was the kind of information that should not be given to the public. There are many good reasons for such restraint, but one of them is that the revelation of details like wiretaps could tip off others that a broader investigation is under way. And in fact, the discussion between the Respondent and [REDACTED] in DX 2 indicates that both were concerned about future steps that might be taken by law enforcement. The Respondent told [REDACTED] that "[t]he judge will see" [REDACTED] "tonight without any problem but the problem is what is going to happen with this because," and [REDACTED] interrupted, "No, not only that we have to wait until we see him so then we will know one [sic] going to do." They agreed that there must have been an investigation of [REDACTED] and the Respondent opined that it was a long-running one. She mentioned that she had told [REDACTED] to be careful because she thought that law enforcement may have been investigating him.

Essentially, this is a case in which, whatever her level of knowledge or intention, a Lieutenant of this Department called a drug trafficker ([REDACTED], whose criminal case resulted in "a most favorable plea" according to the Respondent's counsel) with information about a court-authorized wiretap in a related drug case. She then discussed with that trafficker the implications of a long-term police investigation involving a wiretap. Under these circumstances, the Court can recommend no other penalty but termination.

APPROVED

APR 7 2009
RAYMOND W. KELLY
POLICE COMMISSIONER


David S. Weisel
Assistant Deputy Commissioner – Trials